



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2003-7972

Dear Mr. Aragon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190707.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to the "Front-End Medicaid Fraud Reduction Pilot Program RFI" (Request for Information), including a list of all respondents to the RFI and a copy of all of their responses. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also inform us that the requested information is the subject of two prior open records letter rulings. We have considered your arguments.

Initially, we address the status of the requested list of all respondents to the RFI. You inform us that we ruled on the public availability of that information in Open Records Letter No. 2003-6494 (2003). That decision concludes that, because the commission had provided the list of RFI respondents to another requestor, the commission also must release that same information to any other person who seeks access to it, assuming that the information is not made confidential by law. You do not contend that the requested list of RFI respondents is made confidential by law, and you do not inform us of any change in the law, facts, or circumstances on which the prior ruling is based. Therefore, the commission must release the requested list of RFI respondents in accordance with Open Records Letter No. 2003-6494 (2003). *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) when (1) precisely same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D); (2) same governmental body previously requested and

received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Next, we address the requested responses to the RFI. You inform us that this information is the subject of Open Records Letter No. 2003-7341 (2003). In that decision, we concluded that the commission may withhold the responses to the Front-End Medicaid Fraud Reduction Pilot Program RFI under section 552.104 of the Government Code. You do not inform us of any change in the law, facts, or circumstances on which the prior ruling is based. Therefore, with regard to the requested responses to the RFI, the commission may continue to rely on Open Records Letter No. 2003-7341 (2003). *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 at 6-7 (2001).

In summary, the commission must release the requested list of RFI respondents in accordance with Open Records Letter No. 2003-6494 (2003). With regard to the requested responses to the RFI, the commission may continue to rely on Open Records Letter No. 2003-7341 (2003). As our prior rulings are dispositive, we need not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

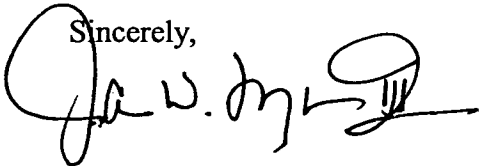
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 190707

c: Mr. Mark Herndon
Parkwood Advisors, LLC
3205 Parkwood Drive
Flower Mound, Texas 75022
(w/o enclosures)